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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,127	04/05/2006	Roy Garvin	18880-002US1	2941

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EXAMINER	
BASS, DIRK R	

ART UNIT	PAPER NUMBER
4132	

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11/25/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/525,127	GARVIN ET AL.	
	Examiner	Art Unit	
	DIRK BASS	4132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 August 2008 (Prelim. Amend.)*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 February 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6 June 2006*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. **Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading.** If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) TITLE OF THE INVENTION.
(b) CROSS-REFERENCE TO RELATED APPLICATIONS.
(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
(d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
(e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
(f) BACKGROUND OF THE INVENTION.
(1) Field of the Invention.
(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
(g) BRIEF SUMMARY OF THE INVENTION.
(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
(i) DETAILED DESCRIPTION OF THE INVENTION.
(j) CLAIM OR CLAIMS (commencing on a separate sheet).
(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

1. The disclosure is objected to because of the following informalities: lack of appropriate headings. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 19 provides for the use of a microtube, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

5. Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 19 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Perlman, US 5225165.

9. Regarding claim 1, Perlman ('165) discloses a microtube comprising;

a. A container having an open end defining an opening for receiving materials to be contained ("upper opening 15", fig. 5), and a closed end (see bottom of "container 11", fig. 1); and

b. A lid adapted to make closing contact with the opening of the container ("lid 14", fig. 1-5), wherein the lid is provided with a flange extending outwardly therefrom ("lid extension 24", fig. 1-5), and arranged to move towards the closed end of the container upon application of a mechanical force to a surface of the flange so as to remove the closing contact, whereby the container is opened (col. 2, l. 30-39).

10. Regarding claims 2-3, Perlman ('165) discloses a microtube which is a microcentrifuge tube (col. 2, l. 20-25) suitable for holding relatively small volumes of material, wherein the relatively small volume of material is a volume up to 4 ml. It is implicit in Perlman ('165) that the claimed microcentrifuge tube is capable of holding volumes between .4 and 2 ml. as related to the general definition of a microcentrifuge tube given in the background of the invention (col. 1, l. 9-14).

11. Regarding claim 4, Perlman ('165) discloses a microtube which is a microcentrifuge tube (col. 2, l. 20-25).

12. Regarding claim 5, Perlman ('165) discloses a microtube wherein the lid is adapted to make a sealing contact with the opening of the container (col. 6, l. 7-14).

13. Regarding claim 6, Perlman ('165) discloses a microtube wherein the lid is connected to the container by a connecting means (see "lid hinge 16", fig. 1-5).

14. Regarding claim 7, Perlman ('165) discloses a microtube wherein the connecting means provides for relative movement between the lid/flange and the container (fig. 5).

15. Regarding claim 8, Perlman ('165) discloses a microtube wherein the connecting means is a hinge (see "lid hinge 16", fig. 1-5).

16. Regarding claim 9, Perlman ('165) discloses a microtube wherein the connecting means comprises a hinge which may be fixed to the upper perimeter wall of the container defining the opening and to the lower surface of the lid, and about which the lid/flange and container can move (see "lid hinge 16", fig. 5).

17. Regarding claim 10, Perlman ('165) discloses a microtube wherein the lid is adapted such that the flange extends outwardly from a position adjacent to or in axial alignment with the connection means (see "lid extension 24", fig. 5).

18. Regarding claim 11, Perlman ('165) discloses a microtube wherein the flange extends upwardly (see "lid extension 24", fig. 5).

19. Regarding claims 12-13, Perlman ('165) discloses a microtube which is constructed of a plastics material wherein the plastics material is laboratory grade injection moulded plastic (see "virgin polypropylene or polyethylene", col. 5, l. 67 – col. 6, l. 4).

20. Regarding claim 14, Perlman ('165) discloses a microtube wherein the lid and flange parts of the tube are made as an integral part of the container (fig. 5).

21. Regarding claim 15, Perlman ('165) discloses a microtube wherein the flange is adapted for use as a handle (see "lid extension", col. 3, l. 49-52).

22. Regarding claim 16, Perlman ('165) discloses a microtube comprising;

c. A container having an open end defining an opening for receiving materials to be contained ("upper opening 15", fig. 5), and a closed end (see bottom of "container 11", fig. 1);

d. A lid connected to the container by a hinge and adapted to make closing contact with the opening of the container (see "lid 14", fig. 1-5); and

e. A flange extending outwardly from the lid (see "lid extension 24", fig. 1-5), wherein the hinge (see "lid hinge 16", fig. 1-5) is connected to the lid (see "lid 14", fig. 5) at a position between the lid and the flange such that upon application of a mechanical force to the surface of the flange, the lid and flange are arranged to pivot about the hinge so as to remove the closing contact between the lid and the container whereby the container is opened (fig. 5).

23. Regarding claim 17, Perlman ('165) discloses a storage system/vessel comprising one or more microtubes (col. 4, l. 67 – col. 5, l. 9 and col. 5, l. 65-66).

24. Regarding claim 18, Perlman ('165) discloses a storage system wherein the storage system/vessel is a rack, a reaction vessel, or a centrifuge (col. 4, l. 67 – col. 5, l. 9 and col. 5, l. 65-66).

25. Regarding claim 19, Perlman ('165) discloses the use of a microtube for the storage of material, as reaction vessels, or in centrifugation (col. 4, l. 67 – col. 5, l. 9 and col. 5, l. 65-66).

Conclusion

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIRK BASS whose telephone number is (571)270-7370. The examiner can normally be reached on Monday - Thursday 10am-4pm.

27. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MIKE LAVILLA can be reached on 5712721539. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DRB/
Dirk R. Bass
20 Nov. 2008

/Michael La Villa/
Michael La Villa
Supervisory Patent Examiner, Art Unit 4132
24 November 2008